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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/696,538	10/25/2000	Timothy Redpath	20563-000100US	3091
20350	7590	12/16/2003	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			KANOF, PEDRO R	
		ART UNIT		PAPER NUMBER
				3628

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/696,538	REDPATH ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Pedro Kanof	3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 October 2000.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

    1. Certified copies of the priority documents have been received.

    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_ .

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## **DETAILED ACTION**

### **Claim Rejections - 35 USC § 103**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosler et al. (US Patent No. 6,304,858) in view of Rebane (US Patent No. 6,078,904).

Claim 1: Mosler discloses a method of operating a simulated trading system, comprising the steps of

setting up an account with a predefined portfolio of nonzero value for each of a plurality of participants (Col. 6, line 37-col. 7, line 8);

accepting trades from the plurality of participants (col. 8, lines 22-36, col. 14, lines 5-21);

applying the trades to the portfolios of the trader participants (Col. 5, lines 15-56, col. 27, lines 38-42).

However, Mosler does not explicitly disclose awarding each participant an amount that is a function of their portfolio's performance over an investment period. Rebane discloses such a step (Col. 8, lines 6-36, col. 14, lines 1-2). Therefore, it would be obvious to one having ordinary skill in the art at the time the invention was made to use that step in the Mosler invention . One would be motivated to use that step in order to compensate the investor risk.

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Claim 2: Mosler and Rebane disclose the method of claim 1. Mosler also discloses wherein the step of setting up an account is a step of setting up an account with a portfolio of a predefined cash amount (Col. 1, line 65-col. 2, line 61, col. 3, lines 60-63, col. 4, lines 38-61, col. 5, lines 26-56, col. 7, line 23-col. 9, line 14, col. 9, line 35-col. 10, line 65, col. 11, line 13-col. 12, line 51, col. 12, lines 57-62, col 13, lines 9-34, col. 12, line 60-col. 14, line 43, col. 14, line 64-col. 16, line 8, col. 18, line 58-col. 19, line 51, col. 20, lines 14-24, col. 20, lines 34-61, , col. 21, lines 7-63).

Claim 3: Mosler and Rebane disclose the method of claim 1. Rebane also discloses wherein an amount awarded at the end of the investment period is all of the net profits the participant made during the investment period (Col. 15, lines 21-29). Therefore, it would be obvious to one having ordinary skill in the art at the time the invention was made to use that step in the Mosler and Rebane invention. One would be motivated to use that step in order to compensate the investor risk.

Claim 4: Mosler and Rebane disclose the method of claim 1. Rebane also discloses wherein an amount awarded at the end of the investment period is a percentage of less than 100% of the net profits the participant made during the investment period (Col. 16, line 65-col. 17, line 7). Therefore, it would be obvious to one having ordinary skill in the art at the time the invention was made to use that step in the Mosler and Rebane invention. One would be motivated to use that step in order to compensate the investor risk.

Claim 5: Mosler and Rebane disclose the method of claim 1. Rebane also discloses wherein an amount awarded at the end of the investment period is all of the net profits the participant made during the investment period up to a predetermined maximum award (Col. 14, lines 41-67, and col. 16, line 65-col. 17, line 7).

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Claim 6: Mosler and Rebane disclose the method of claim 1. Mosler also discloses the step of executing trades made by the participants with the traded securities held in the name of a system operator or the participants (Col. 15, line 66-col. 16, line 8).

Claim 7: Mosler and Rebane disclose the method of claim 1. Mosler also discloses the step of offsetting risk to a system operator by one or more of sponsorships, advertising and participant fees (Col. 31, lines 49-51).

Claim 8: Mosler and Rebane disclose the method of claim 1. Mosler also discloses the steps of

accounting for the trades as if the participants made the trades with some predetermined delay (Col. 16, line 54-col. 17, line 30); and

executing hedging transactions in response to participant trades (Col. 6, line 37-col. 7, line 8).

Claim 9: The method of claim 8, wherein the predetermined delay is a delay to the market close (Col. 20, lines 25-29).

#### Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. Pedro R. Kanof whose telephone number is (703) 308-9552. The examiner can normally be reached on weekdays from 7:30 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Hyung Sough, can be reached on (703) 308-0505. The fax phone numbers for this Group are: Customer Service (703) 872-9325, Before Final (703) 872-9326, and After Final (703) 872-9327.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

PRK-12/12/03



**JEFFREY PWU  
PRIMARY EXAMINER**